



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,844	03/26/2007	Peter Bauer	2004P00501WOUS	4430

46726 7590 12/14/2009  
BSH HOME APPLIANCES CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
100 BOSCH BOULEVARD  
NEW BERN, NC 28562

EXAMINER
----------

BAUER, CASSEY D

ART UNIT	PAPER NUMBER
----------	--------------

3744

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

12/14/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/593,844	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> Cassey Bauer	<b>Art Unit</b> 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

The Amendment filed July 20, 2009 has been entered. Claims 1—35 remain pending in the application. The previous claim objection to claim 16 has been withdrawn in light of Applicant's amendment to claim 16. The previous 35 USC 112 second paragraph rejection has been withdrawn in light of the amendment to claim 17.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 16, 17, 22, 24, 25, 27-29 and 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 383 222 A2 to Alsa et al., hereinafter referred to as Alsa.

In reference to claim 16, Alsa teaches the claimed invention including:

A refrigerating appliance, see figure 1, comprising:

at least two storage compartments (9, 10, 11);

an evaporator (8), which can be cooled independently --from-- an evaporator (6) of at least one other storage compartment, being associated with each storage compartment; and

means for switching the mode of operation of at least one of the compartments (10) between a freezing mode and a non-freezing mode (4, 14, 15, etc.) see also column 3 lines 27-31.

Alsa fails to teach the individual storage compartments (9, 10, 11) thermally insulated from each other and from the surrounding area however, the examiner takes official notice that insulating separate storage compartments of a refrigerator appliance, particularly for storage compartments maintained at different temperatures is well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to include thermal insulation to the refrigerating appliance of Alsa in order to prevent heat exchange between the individual storage compartments maintained at varying temperatures and to prevent heat contamination from the outer environment.

In reference to claim 17, Alsa teaches the claimed invention including:

wherein the means for switching the mode of operation also allow switching to a 0° mode, see column 2 lines 41-56 where it is discussed that the compartment (10) can be used for freezing. Since it is well known in the art that 0° Celsius is the freezing point of water one skilled in the art would recognize that the temperature of the compartment (10) must be equal to or less than 0° Celsius in order to achieve freezing of the contents. Further, one skilled in the art would recognize that extra energy would be required to keep the refrigerator at a temperature lower than 0°

Art Unit: 3744

Celsius. Since one skilled in the art would recognize that 0° Celsius is the highest temperature possible which will maintain food products in a frozen status and that it is desirable to maintain the compartment at the highest possible temperature to increase energy efficiency, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerator so that the means for switching (14, 15, etc.) allow switching to a 0° Celsius mode in order to maintain the products in the compartment (10) in a frozen state while achieving lower energy usage.

In reference to claim 22, Alsa discloses the claimed invention:

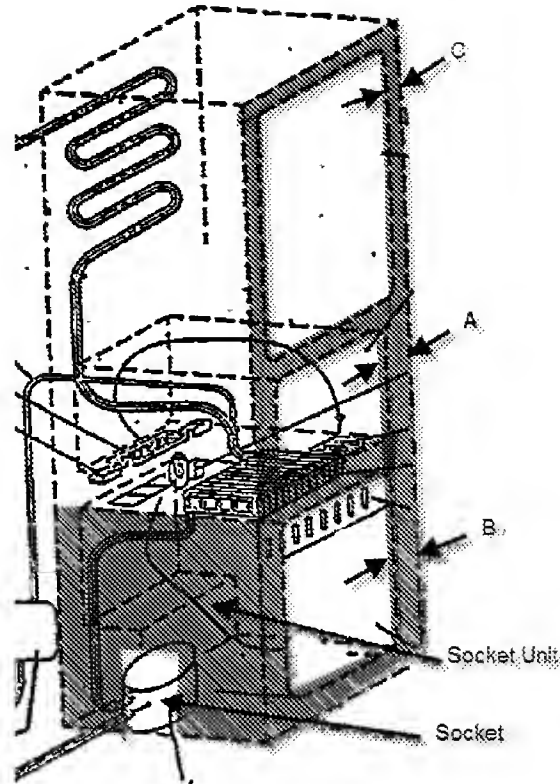
wherein at least one of the compartments has a no-frost evaporator, see column 5 lines 13-26.

In reference to claim 24, Alsa discloses the claimed invention:

wherein the no- frost evaporator (8) includes a plate-type design evaporator, see figure 1.

In reference to claim 25, Alsa discloses the claimed invention:

wherein the first and second compartments have insulation of substantially the same thickness. Alsa as modified in claim 16 above has insulation filling the entirety walls. As illustrated in Reference 1 below, storage compartments (10) and (11) have outer walls of substantially the same thickness (A and B). Therefore, the apparatus of Alsa as modified in claim 16 above will have insulation of substantially the same thickness in compartments 10 and 11.



Reference 1

In reference to claim 27, Alsa discloses the claimed invention:

wherein at least one of the compartments cannot be switched to a freezing mode (9) , and has a thinner insulation than the other of the compartments (10) which can be switched to the freezing mode. Alsa as modified in claim 16 above has insulation filling the entirety walls. As illustrated in Reference 1 above, storage compartment (9) has thinner walls than compartment (10) thickness (A and C). Therefore, the apparatus of Alsa as modified in claim 16 above will have thinner insulation in the compartment which cannot be switched to a freezing

mode (9) will be thinner than the insulation of the compartment which can be switched to a freezing mode (10).

In reference to claim 28, Alsa discloses the claimed invention:

wherein a compressor (1) is installed in a recess made in one of the compartments (11) see figure 1.

In reference to claim 29, Alsa discloses the claimed invention:

wherein a compressor (1) is installed in a socket unit, see Reference 1 above for definition of socket unit.

In reference to claim 31, Alsa discloses the claimed invention:

wherein the means for switching the mode of operation of at least one of the compartments (10) between a freezing mode and a non-freezing mode includes a regulator (14) and a selector switch (15).

**Claims 18-21, 26 and 32-35 are** rejected under 35 U.S.C. 103(a) as being unpatentable over Alsa in view of US 5,377,498 to Cur et al., hereinafter referred to as Cur.

In reference to claim 18, Alsa and Cur disclose the claimed invention:

Alsa fails to teach wherein the means for switching the mode of operation are provided for at least two compartments.

Cur teaches a refrigerating apparatus with three thermally insulated compartments maintained at varying temperatures, see figures 1-9. Cur, column 2 lines 41-54, further teaches that all of these compartments are convertible and that any or all of the compartments can be used at any of the selectable temperatures (-18°C, 0°C, 5°C, see column 1 lines 44-68).

Art Unit: 3744

Therefore, it is a known method to include more than one convertible refrigeration compartment. Since all claimed elements were known in the art, and one having ordinary skill in the art could have combined the elements as claimed with no change in their respective function, and the combination would have yielded the predictable result of providing multiple refrigeration compartments with variable temperatures, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa, to include means for switching the mode of operation for at least two of the compartments in order to provide flexibility to the consumer.

In reference to claim 19, Alsa and Cur fail to specifically teach:

wherein at least one of the compartments has a wire tube evaporator.

However, Alsa does teach using a wire tube condenser (3). Since wire tube type heat exchangers are well known in the art, of refrigeration, it would have been obvious to one having ordinary skill in the art to modify the evaporator (6) of Alsa and Cur with a wire tube type evaporator in order to provide structural support for the coiled tube and prevent deformation of the coil.

In reference to claim 20, Alsa and Cur fail to specifically teach:

wherein another of the compartments has a lateral wall evaporator.

However, Alsa does teach an evaporator (6) situated on a lateral wall, see figure 1. Since all claimed elements were known in the art, and



Art Unit: 3744

one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa and Cur and place the evaporator (8) on a lateral wall of the refrigerating apparatus in order to mount the evaporator in a manner that would simplify the tubing arrangement by placing both evaporators in a single two dimensional plane.

In reference to claim 21, Alsa and Cur fail to specifically teach:

wherein another of the compartments also has a wire tube evaporator.

However, Alsa does teach using a wire tube condenser (3). Since all claimed elements were known in the art, and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa and Cur and replace the evaporator (8) with a wire tube evaporator in order to cool the inside of compartment (10) in a simple effective manner.

In reference to claim 26, Alsa and Cur disclose the claimed invention:

Alsa teaches wherein the first (10) and second compartments (11) have different volumes but fail to teach wherein the first and second compartments can be operated in the same plurality of operating modes.

Cur teaches a refrigerating apparatus with three thermally insulated compartments maintained at varying temperatures, see figures 1-9. Cur, column 2 lines 41-54, further teaches that all of these compartments are convertible and that any or all of the compartments can be used at any of the selectable temperatures (-18°C, 0°C, 5°C, see column 1 lines 44-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa, to include the ability for the first and second compartments to be operated in the same plurality of operating modes, in order to provide maximum flexibility to the consumer.

In reference to claim 32, Alsa and Cur disclose the claimed invention:

further comprising a second regulator and a second selector switch, wherein each of the compartments is associated with one of the regulators and selector switches to control the mode of operation within the compartment.

Cur teaches a refrigerating apparatus with three thermally insulated compartments maintained at varying temperatures, see figures 1-9. Cur, column 2 lines 41-54, further teaches that all of these compartments are convertible and that any or all of the compartments can be used at any of the selectable temperatures (-18°C, 0°C, 5°C, see column 1 lines 44-68).

Art Unit: 3744

Cur figure 7 further teaches using a regulator (59, 57, 55, capillary tubes) associated with each compartment (26, 30, and 34) and a selector switch (72, 70, 68) associated with each regulator and each compartment for switching between cooling modes. Since it is known to provide a selector switch and regulator for each compartment of a refrigerator which is switchable between a plurality of modes of operation, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa, to include means for switching the mode of operation for at least two of the compartments and provide a regulator and selector switch for each compartment switchable between operating modes in order to provide maximum flexibility to the consumer.

In reference to claim 33, Alsa and Cur disclose the claimed invention:

Alsa teaches a refrigerating appliance, see figure 1, comprising:

at least two storage compartments (9, 10, 11)

an evaporator (8), which can be cooled independently from an evaporator (6) of at least one other storage compartment, being associated with each storage compartment, wherein compartment (10) is operable in a plurality of operating modes of different temperatures, see column 2 lines 27-31; and

a mode switch (15) cooperable with the evaporator (8) and acting to switch the mode of operation of the compartment (10) between the operating modes.

Alsa fails to teach two storage compartments thermally insulated from each other and from a surrounding area and wherein each of the storage compartments is operable in a plurality of operating modes of different temperatures.

However, the examiner takes official notice that insulating separate storage compartments of a refrigerator appliance, particularly for storage compartments maintained at different temperatures is well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to include thermal insulation to the refrigerating appliance of Alsa in order to prevent heat exchange between the individual storage compartments maintained at varying temperatures and to prevent heat contamination from the outer environment.

Further, Cur teaches a refrigerating apparatus with three thermally insulated compartments maintained at varying temperatures, see figures 1-9. Cur, column 2 lines 41-54, further teaches that all of these compartments are convertible and that any or all of the compartments can be used at any of the selectable temperatures (-18°C, 0°C, 5°C, see column 1 lines 44-68). Further, it would have been well within the skill of one having ordinary skill in the art to modify the refrigerator of Also so that

Art Unit: 3744

each compartment is operable in a plurality of operating modes by actuation of a the mode switch (15). Since making a plurality of operating modes available to every compartment in a refrigerator, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa, to include the ability for the first and second compartments to be operated in the same plurality of operating modes, in order to provide maximum flexibility to the consumer.

In reference to claim 34, Alsa and Cur disclose the claimed invention:

wherein the plurality of operating modes for each of the storage compartments are the same, see Cur column 2 lines 41-45 where each of the storage compartments are operable between the same selectable switches.

In reference to claim 35, Alsa and Cur disclose the claimed invention:

Alsa and Cur fail to teach wherein the plurality of operating modes for each of the storage compartments are different.

However, Applicant has not disclosed that providing the plurality of operating modes of each of the storage compartments to be different solves any stated problem or is for any particular purpose, and it appears that the refrigerator would work equally well as long as the storage compartments were operable between at least two operating modes (whether they are the same or otherwise) it would have been an obvious matter of mere design choice to one having ordinary skill in the art at the

time the invention was made to modify they refrigerator of Alsa and Cur so that the plurality of operating modes for each of the storage compartments are different in order to design a cost effective refrigerator which meets the demands of the consumer.

**Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Alsa in view of US 3,018,637 to Mann et al., hereinafter referred to as Mann.

In reference to claim 23, Alsa and Mann disclose the claimed invention:

Alsa fails to specifically disclose wherein at least one of the compartments has includes a laminar evaporator.

Man teaches a no-frost, laminar (roll bonded) evaporator for use in a refrigerating apparatus, see figures 1-3, column 1 lines 23-28 and column 4 lines 8-13. Since both evaporators taught in the prior art are useful for the same purpose, that is refrigeration of a stored product, and one of ordinary skill in the art could have combined the components in order to form a third composition used for the very same purpose, and it has been held that combining the prior art components flows logically from their having been individually taught in the prior art, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the evaporator (8) of Alsa with the no-frost laminar evaporator of Mann in order to effectively cool the products stored in the compartment (10).

**Claim 30** is rejected under 35 U.S.C. 103(a) as being unpatentable over Alsa in view of US 2002/0002839 A1 to Sessa et al., hereinafter referred to as Sessa.

In reference to claim 30, Alsa and Sessa disclose the claimed invention:

Alsa teaches wherein at least two compartments (9 and 10) are formed in a body which can be connected to the socket unit (see Reference 1 above) in a first orientation.

But fails to teach the two compartments connected to the socket unit in a second orientation rotated 180° about a horizontal axis relative to the first orientation.

Sessa teaches wherein at least two compartments (P adjacent 3, and C) are formed in a body (3, door) which can be connected to a socket unit (1) in at least one of a first orientation, see figure 1, and a second orientation rotated 180° about a horizontal axis relative to the first orientation, see figure 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the refrigerating apparatus of Alsa to include the reversible door of Sessa in order to provide a refrigerator which is able to assume two different configurations by using substantially the same basic components and provide maximum flexibility to the consumer.

### ***Response to Arguments***

In response to Applicant's arguments beginning on page 12 of the response that Alsa does not disclose an evaporator associated with each compartment has been considered but is not persuasive. Applicant should note that the features upon which applicant relies (i.e., a *separate* evaporator *provided* with each compartment) are not recited in the

Art Unit: 3744

rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's claim language requires that *an* evaporator be *associated* with each storage compartment not *separate* evaporators *provided* with each storage compartment. In the case of *Alsa*, the evaporator (8) is associated with the freezer compartment (11), evaporator (6) is associated with the fresh food compartment (9) and the evaporator (6 or 8) is associated with compartment (10) depending upon the selected mode of operation. Therefore, *Alsa* teaches *an* evaporator *associated* with each of the three compartments and meets the claimed limitations. The rejection of claim 16 is therefore proper and remains.

Further, in regards to Applicant's arguments beginning on page 12 of the response that it would not have been obvious to incorporate an additional evaporator and since *Alsa* does not suggest a modification to to include an additional evaporator since such a modification would increase the manufacturing cost and subvert the functionality has been considered but is not persuasive. Again, Applicant should note that the features upon which applicant relies (i.e., an additional evaporator) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore the examiner asserts, in arguendo, that there is no need



to include an additional evaporator with the refrigerator of Alsa according to the claimed invention. Therefore, the rejection of claim 16 is proper and remains.

In response to Applicant's arguments beginning on page 13 of the remarks that applicant has invoked 35 U.S.C. 112, sixth paragraph with means plus function language and that the structure of Alsa neither corresponds to the claimed invention nor an equivalent structure has been considered but is not persuasive. Applicant should note, that the examiner defines the "means for switching" as elements (4, 14, 15, etc.) of Alsa specifically. Together with a microprocessor controlling the whole operation, the solenoid (4) throttles refrigerant to the each evaporator (6 or 8) which requires cooling. Further (14) is a movable flap (regulator) which regulates the flow in and out of compartment (10) and (15) is an actuator (switch) which switches the regulator (14) between an open and closed position. Applicant's specification provides no disclosure which would suggest that switch (15), solenoid (4) and regulator (14) of Alsa are not structurally the same as the structure disclosed by Applicant. Specifically, Applicant's structure associated with the means for switching described on page 5, line 23 through page 6, line 2 include:

*A solenoid valve* which corresponds to element (4) of Alsa in that it throttles refrigerant to one of the compartments in which a refrigerant requirement has been established; and

*regulators* which correspond to element (14) of *Alsa* in that they regulate the temperature the temperature of the compartment (10) of which it is located.

No other structure is specified by Applicant's disclosure as corresponding to the "means for switching" language claimed by Applicant that would indicate that the switching means of *Alsa* (4, 14, 15, etc.) does not directly correspond to the claimed switching means. Nothing in Applicant's specification would make clear to one having ordinary skill that the "means for switching" includes separate switches, regulators, and solenoids for each evaporator provided in the refrigerator as argued by Applicant on page 13 of the response, (see, for example, figures 3 and 4 of Applicant's disclosure which does not provide a regulator for each compartment). Therefore, the structure cited by the examiner as corresponding to the "means for switching" in claim 1 is proper and the rejection of claim 16 remains.

In response to Applicants arguments on page 14 of the response that *Cur* discloses a single evaporator and therefore does not correct the deficiencies of *Alsa* has been considered but is not persuasive. As explained above, nothing in any of the claims require that a *separate* evaporator be *provided* with each compartment simply that an evaporator is associated with each compartment. Therefore, it is irrelevant that *Cur* discloses only one evaporator and the rejection of claim 16 is proper and remains.

In response to Applicant's arguments beginning on page 14 of the response that it would not be proper to modify Alsa as the rejection suggests because the Alsa device will no longer perform the same function prior to the modification has been considered but is not persuasive. First Applicant should note that the switching means as defined by the examiner is a solenoid (4), regulator (14) and switch (15) as explained above in the response to arguments. Therefore, in the modification of Alsa by Cur, an additional evaporator is not provided. Applicant should note that the function of the Alsa apparatus is to "allow anyway obtaining at least two different temperatures inside the intermediate compartment", see column 1 lines 50-54 "which can be used according to a user's desire", see column 2 lines 1-13. The modification of Alsa by Curr to provide a mode of switching for one of the other compartments (9 or 11) does not prohibit the refrigerator of Alsa from allowing at least two different temperatures inside the intermediate compartment (10) according to a user's desire. In fact, this operation is not modified at all by the combination of Alsa and Curr. The only modification is allowing one of the remaining compartments (9) or (11) to also obtain at least two different temperatures inside the refrigerator according to a user's desire. Since the Alsa device would continue to perform the original function of allowing in anyway obtaining at least two different temperatures inside the intermediate compartment (10) which can be used according to

a user's desire when modified by Cur, the combination is proper and the rejection of claim 18 above remains.

Similarly, In response to Applicant's arguments beginning on page 15 of the response that with regard to claims 26 and 32, it is directly contrary to Alsa's express teachings to modify the refrigerator such that all compartments can be operated in the same plurality of operating modes, or that such a device additionally includes a second regulator and a second switch. Applicant should note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, in claims 26 and 32, Alsa is modified by Cur which provides the teachings necessary to modify the refrigerator of Alsa. Again, since the Alsa device would continue to perform the original function of allowing in anyway obtaining at least two different temperatures inside the intermediate compartment (10) which can be used according to a user's desire when modified by Cur, the combination is proper and the rejections of claims 26 and 32 above remain.

In regard to Applicant's arguments on page 15 of the response that Alsa is not capable of "each of the storage compartments is operable in a plurality of operating modes of different temperatures has been considered but is not persuasive. Alsa as modified by Cur would be

capable of performing each of Applicant's claimed elements in claims 33-35. See the rejection of claims 33-35 above and the Examiner's response to arguments above.

### ***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassey Bauer whose telephone number is (571)270-7113. The examiner can normally be reached on Monday -Friday: 7-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on (571)272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cassey Bauer/  
Examiner, Art Unit 3744

/Frantz F. Jules/  
Supervisory Patent Examiner, Art Unit 3744